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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL ORSHAN, CHRISTOPHER
ENDARA, and DAVID HENDERSON,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 5:14-CV-05659-EJD

**STIPULATION AND [PROPOSED]
ORDER RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION**

ESI STIPULATION

Plaintiffs and Defendant Apple Inc. (each a “Party,” and collectively, the “Parties”) hereby agree, subject to approval by the Court, that the following procedures shall govern discovery of Electronically Stored Information (“ESI”) in this case.¹ This Stipulation supplements the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

1. Custodian names and search terms to be exchanged. The Parties shall meet and confer to reach agreement on a reasonable list of custodians for purposes of collection, review, and production of ESI, in response to any request for production. ESI, including but not limited to electronic files and emails, shall be collected for each individual custodian from the personal computers, networks resources, and other electronic devices that those individuals use for work purposes. Paper documents that are scanned or otherwise digitized are not considered ESI. Notwithstanding prior agreement on the search terms to be used for electronic searches, should a search produce an unreasonably large number of non-responsive or irrelevant results, the Parties shall (at the producing Party’s request) discuss further refinement of the culling effort. That discussion shall include providing sufficient support for any steps taken to refine the corpus that establishes the party has satisfied its duty under the Federal Rules to conduct a reasonable and proportional search, including where necessary an explanation of any date range or other temporal limitations and search terms (or other methods) used to refine or narrow the scope of review. The Parties shall make good faith efforts to identify appropriate email custodians and produce email on the agreed upon schedule, but reserve the right to seek email from additional email custodians identified through further discovery.

2. Format for production of documents existing in electronic format. Except as otherwise provided for in this Stipulation or in the Parties’ separate Stipulated Protective Order, all documents existing in electronic format shall be produced as follows:

¹ The Parties have separately agreed to a Stipulated Protected Order Regarding the Disclosure and Use of Discovery Materials (the “Stipulated Protective Order”). See Dkt. No. 94.

1 a) Documents may be produced as PDFs or TIFFs, at each Party's option, unless
2 expressly stated otherwise in this Stipulation.

3 b) The Parties will meet and confer on the production format of less-commonly
4 used file types, such as CAD, GIS data, materials and prototypes testing, etc.

5 c) Native files. The parties meet and confer to discuss requests for production of
6 files in native format, or on a case-by-case basis. If the Parties are unable to reach
7 agreement with regard to requests for additional documents in native-file format,
8 the Parties reserve the right to seek relief from the Court. Documents produced
9 natively shall be represented in the set of imaged documents by a slipsheet
10 indicating the production identification number and confidentiality designation for
11 the native file that is being produced.

12 d) At least ten days before use at any deposition, the Parties may produce TIFF or
13 PDF versions of any previously produced native file for use at the deposition.

14 e) The Parties shall use reasonable efforts to produce ESI with applicable metadata
15 as specified in Attachment A, and searchable text extracted from the ESI. To the
16 extent that metadata does not exist or is not reasonably accessible or available for
17 any documents produced, nothing in this Stipulation shall require any Party to
18 extract, capture, collect generate, or produce such data. The parties recognize that
19 not every document will be collected so-as to preserve all metadata (e.g., targeted
20 documents collected from a discrete location by a corporate paralegal do not need
21 to employ forensic collection techniques). To the extent a document collected in
22 that manner cannot be understood without some piece of missing metadata, the
23 Parties may meet and confer regarding any request to attempt to supply the missing
24 metadata for that document.

25 f) Redacted ESI will be produced as TIFFs or PDFs. Hard-copy documents will
26 be scanned and produced as TIFFs or PDFs, with the following metadata fields

1 included (as described in Attachment A) where applicable: BegBates, EndBates,
2 BegAttach, EndAttach, PageCount, Text, Custodian; and OCR'ed searchable text.
3 g) Embedded Objects. Where reasonably feasible, OLE embedded objects
4 (embedded MS Office files, etc.) shall be extracted as separate files and treated as
5 attachments to the parent document. Images embedded in any document shall not
6 be produced separately.

7 h) Load Files. Productions will include image load files in Opticon or IPRO format
8 as well as Concordance format data (.dat) files with the metadata fields identified
9 in Attachment A for all included documents. All metadata will be produced in
10 UTF-8 format.

11 i) Text Files. A single text file shall be provided for each document. The text file
12 name shall be the same as the Bates number of the first page of the document with
13 the document extension ".txt" suffixed. Files names shall not have any special
14 characters or embedded spaces.

15 j) TIFFs or PDFs. All TIFFs produced by any party in this matter will be single
16 page Group IV TIFF format, 300 dpi quality or better. All PDFs produced by any
17 party in this matter will be multiple page, searchable PDF format at a resolution of
18 at least 300 dpi. Image file names will be identical to the corresponding bates
19 numbered images, with a ".tif" or ".pdf" file extension as applicable. The producing
20 party will brand all TIFF or PDF images in the lower right-hand corner with its
21 corresponding bates number, using a consistent font type and size. The Bates
22 number should be designed to avoid obscuring any part of the underlying image.

23 k) Date Fields Time Zone. All documents shall be processed so as to show fielded
24 dates and times in UTC.

1 l) Exception Files. The Parties will use reasonable efforts and standard industry
2 practices to address Documents that present imaging or form production problems
3 (including encrypted and/or protected files identified during the processing of ESI).

4 m) Native File Image Placeholders. A Bates-stamped placeholder TIFF or PDF,
5 bearing the legend “This document has been produced in native format” shall be
6 provided for ESI produced in native format; these placeholders will be Bates
7 numbered in the same way as any other TIFF or PDF, and the Bates number of that
8 single page shall be used as the BegBates and EndBates of the associated document.

9 n) Databases, Structured, Aggregated or Application Data. To the extent
10 structured data cannot be exported in a reasonably understandable format, the
11 Parties will meet and confer to address the production and production format.

12 o) De-NISTing. Electronic files may be De-NISTed, removing commercially
13 available operating system and application file information contained on the current
14 NIST file list.

15 p) Unitization of Hard Copy Documents: Apple does not anticipate that there will
16 be much, if any, hard copy discovery. If there are hard copies, the parties will
17 discuss review of the hard copies in the paper format or use reasonable efforts to
18 unitize images of hard copy documents, to the extent the original documents
19 appeared to be units in physical form. Attachments should follow parents, and
20 folders or binders should be coded as the parent. There is no requirement that a
21 producing party objectively code hard copy documents to provide metadata fields
22 not otherwise available.

23 q) Proprietary Software. To the extent that relevant ESI cannot be rendered or
24 reviewed without the use of proprietary software, the parties shall meet and confer
25 to discuss production.

26 r) The producing party will brand any confidentiality endorsements in a corner of

any TIFF or PDF images representing the produced item. Those endorsements should be in a consistent font type and size, and should avoid obscuring any part of the underlying image or Bates number.

s) Email Threading. No email may be withheld because it is included in whole or in part in a more inclusive email, although parties may use email threading for their own internal review and other internal processes.

3. Source code. This Stipulation does not govern the format for any production of source code, which shall be produced, if at all, pursuant to relevant provisions of a separate Protective Order or other agreement between the Parties.

4. Requests for hi-resolution or color documents. The Parties agree to respond to reasonable and specific requests for the production of higher resolution or color images. Nothing in this Stipulation shall preclude a producing Party from objecting to such requests as unreasonable in number, timing or scope, provided that a producing Party shall not object if the document as originally produced is illegible or difficult to read. The producing Party shall have the option of responding by producing a native-file version of the document. If a dispute arises with regard to requests for higher resolution or color images, the Parties will meet and confer in good faith to try to resolve it.

5. Documents protected from discovery. Communications involving outside and/or in-house counsel that post-date the filing of the original complaint need not be placed on any privilege log.

6. Technology Assisted Review. Nothing in this Order prevents the Parties from agreeing to use technology-assisted review insofar as it improves the efficacy of discovery.

7. Non-Waiver. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a

mass production is not itself a waiver in this case or in any other federal or state proceeding.

8. Modifications: Any practice or procedure set forth herein may be varied by agreement of the parties, confirmed in writing.

IT IS SO STIPULATED.

Dated: October 20, 2020

O'MELVENY & MYERS LLP
MATTHEW D. POWERS
ADAM M. KAPLAN

By: /s/ Matthew D. Powers
Matthew D. Powers

Attorneys for Defendant
APPLE INC.

Dated: October 20, 2020

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ATTESTATION OF FILING

Pursuant to Local Rule 5.1(i)(3), I hereby attest that concurrence in the filing of this ESI Stipulation and [Proposed] Order has been obtained from Michael McShane.

Dated: October 20, 2020

O'MELVENY & MYERS LLP

By: /s/ Matthew D. Powers

Matthew D. Powers

Attorneys for Defendant
APPLE INC.

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated:

Edward J. Davila
United States District Judge

EXHIBIT A

TABLE OF METADATA FIELDS

Attachment A

Case 5:14-cv-05659-EJD Document 95 Filed 10/20/20 Page 11 of 12

Field	Definition	Doc Type
CUSTODIAN	Name of person or other data source (non-human) from where documents/files are produced. <i>Where redundant names occur, individuals should be distinguished by an initial which is kept constant throughout productions (e.g., Smith, John A. and Smith, John B.)</i>	All
BEGBATES	Beginning Bates Number (production number)	All
ENDBATES	Ending Bates Number (production number)	All
PGCOUNT	Number of pages in the document	All
FILESIZE	File Size	All
FILENAME	Original file name at the point of collection	E-Document
NATIVEFILELINK	For documents provided in native format only	All
TEXTPATH	File path for OCR or Extracted Text files	All
FROM	Sender	E-mail
TO	Recipient	E-mail
CC	Additional Recipients	E-mail
BCC	Blind Additional Recipients	E-mail
SUBJECT	Subject line of e-mail	E-mail
ATTACHBATES	Bates number from the first page of each attachment	E-mail
BEGATTACH	First Bates number of family range (i.e. Bates number of the first page of the parent e-mail or document)	E-mail, E-Documents
ENDATTACH	Last Bates number of family range (i.e. Bates number of the last page of the last attachment or, if no attachments, the document itself)	E-mail
ATTACHCOUNT	Number of attachments to an e-mail	E-mail
DATESENT (mm/dd/yyyy hh:mm:ss AM)	Date Sent	E-mail

ESI STIPULATION
CASE NO. 5:14-CV-05659-EJD

DATERCVD (mm/dd/yyyy hh:mm:ss AM)	Date Received	E-mail
HASHVALUE	MD5 hash value	All
TITLE	Internal document property	E-document
AUTHOR	Internal document property	E-document
DATECRTD (mrn/dd/yyyy hh:mm:ss AM)	Creation Date	E-document
LAST MODIFIED BY	Last person who modified (saved) a document	E-document
LASTMODD (mrn/dd/yyyy hh:mm:ss AM)	Last Modified Date	E-document
FileExtension	The file extension for the file.	All
ProdVol	Name of media that data was produced on.	All